

## SENATE BILL NO. 137

INTRODUCED BY LEWIS

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH; GRANTING RULEMAKING AUTHORITY REGARDING STANDARDS FOR SANITATION AND SAFETY, LICENSING, ENFORCEMENT PROCEDURES, AND FEES; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF TATTOOING AND BODY-PIERCING LAWS; PROVIDING FOR THE DENIAL AND CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY HEALTH AUTHORITIES; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR THE DEPARTMENT TO USE IN ADMINISTERING THE LAWS; AMENDING SECTIONS 45-5-623, 50-1-202, 50-2-116, AND 50-2-130, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Purpose.** The regulation of tattooing and body-piercing establishments is required to protect the public health and safety.

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 15], unless the context clearly indicates otherwise, the following definitions apply:

(1) ~~(a)~~ "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

~~(b) The term does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear.~~

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in

1 Title 50, chapter 2.

2 (5) "Local health officer" has the meaning provided in 50-2-101.

3 (6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing  
4 on the same premises and under the same management.

5 (7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the  
6 business of operating, owning, or offering the services of body piercing or tattooing.

7 (8) "Regulatory authority" means the department of public health and human services, the local board  
8 of health, the local health officer, or the local sanitarian.

9 (9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing  
10 the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as  
11 permanent lip coloring and permanent eyeliner.

12 (b) The term does not include:

13 (i) the practice of electrology as defined in 37-31-101; or

14 (ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of  
15 colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic,  
16 medical, or figurative purposes.

17  
18 **NEW SECTION. Section 3. Rulemaking authority.** The department shall adopt and enforce minimum  
19 safety and sanitation requirements for tattooing and body piercing, including rules to:

20 (1) set standards to ensure sanitation and safety in establishments to protect the public health and  
21 safety;

22 (2) license establishments;

23 (3) provide procedures for enforcement of the laws and rules relating to establishments, including  
24 implementing plans of correction;

25 (4) impose fees for licensure, inspection, enforcement, training, and administration.

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27 **NEW SECTION. Section 4. ~~Powers and duties of~~ LICENSURE AND REGULATION BY local boards of**  
28 **health.** (1) ~~Subject to the restrictions in 50-2-130, a~~ A local board of health may implement its own licensure and  
29 regulatory program ~~separate from~~ FOR TATTOOING AND BODY-PIERCING ESTABLISHMENTS INDEPENDENT OF that of  
30 the department ~~and~~. A LOCAL BOARD OF HEALTH'S LICENSURE AND REGULATORY PROGRAM MUST BE OPERATED IN LIEU

1 OF THE DEPARTMENT'S LICENSURE AND REGULATORY PROGRAM.

2 (2) SUBJECT TO THE RESTRICTIONS IN 50-2-130, A LOCAL BOARD OF HEALTH THAT OPERATES ITS OWN  
3 LICENSURE AND REGULATORY PROGRAM PURSUANT TO SUBSECTION (1) may adopt necessary regulations that are  
4 not less stringent than department rules adopted under [section 3]. The rules may include:

- 5 (a) standards to ensure sanitation and safety in establishments to protect public health and safety;  
6 (b) licensure of establishments;  
7 (c) procedures for enforcement of the laws and rules relating to establishments, including the  
8 implementation of plans of correction; and  
9 (d) fees that reflect and may not exceed the actual costs incurred for licensure, inspection, enforcement,  
10 training, and administration.

11 ~~(2)~~(3) The local board of health shall report annually to the department on the number of establishments  
12 that it licenses and regulates.

13  
14 NEW SECTION. Section 5. Injunctions. A regulatory authority may bring an action for an injunction  
15 against any continued violation of [sections 1 through 15] or any rule adopted under [section 3 or 4].

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17 NEW SECTION. Section 6. County attorney to prosecute violations. When a regulatory authority  
18 furnishes evidence to the county attorney of a county in this state where the violating establishment operates,  
19 the county attorney shall prosecute any person violating [sections 1 through 15] or any rule adopted under  
20 [section 3 or 4].

21  
22 NEW SECTION. Section 7. Penalties -- misdemeanor. A person who purposefully or knowingly  
23 violates any provision of [sections 1 through 15] or rules adopted under [section 3 or 4] is guilty of a  
24 misdemeanor. Upon conviction, the person shall be fined:

- 25 (1) an amount of not less than \$50 or more than \$100 for the first offense;  
26 (2) an amount of not less than \$75 or more than \$200 for the second offense; and  
27 (3) an amount of not less than \$200 and imprisoned in the county jail for not more than 90 days for the  
28 third and subsequent offenses.

29  
30 NEW SECTION. Section 8. Civil penalties -- injunctions not barred. (1) An establishment that

violates [sections 1 through 15] or rules adopted under [section 3 or 4] is subject to a civil penalty not to exceed \$500 for each violation.

(2) An action to impose civil penalties under this section does not bar actions for injunctions to enforce compliance with [sections 1 through 15] or to enforce compliance with a rule adopted under [section 3 or 4].

**NEW SECTION. Section 9. Costs and expenses -- recovery by regulatory authority.** In a civil action initiated by the regulatory authority under [section 5 or 8], the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of [sections 1 through 15] or a rule adopted under [section 3 or 4] to pay the costs of investigations and any other expenses incurred. These costs are limited to the direct costs of investigations and other expenses.

**NEW SECTION. Section 10. License required -- fees -- application.** (1) A person operating an establishment shall procure an annual license from the appropriate regulatory authority having jurisdiction. For each annual license, the regulatory authority shall collect a fee established by rule pursuant to [section 3 or 4].

(2) A separate license is required for each establishment operating on different premises.

(3) A person operating a multiple-type establishment shall procure separate licenses for body piercing and tattooing businesses.

(4) An application for a license must be made to the department on forms containing the information required by the department.

(5) Licenses are not transferable.

**NEW SECTION. Section 11. Late fee -- allocation of licensure and late fees.** (1) A person operating an establishment who fails to renew a license issued by the department by the expiration date and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual fee required by [section 10]. Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(2) The department shall deposit the fees collected under [section 10] and subsection (1) of this section in the state special revenue account provided for in [section 15].

**NEW SECTION. Section 12. Denial or cancellation of license by regulatory authority --**

**multiple-type establishments.** (1) The regulatory authority may deny or cancel a license it issues if it finds, after proper investigation, that the applicant or licensee is not in compliance with [sections 1 through 15] or a rule adopted under [section 3 or 4] and the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When a multiple-type establishment is licensed, the denial or cancellation may affect both tattooing and body-piercing operations or only one of the operations, as determined by the regulatory authority.

**NEW SECTION. Section 13. Notice and hearing required for license denial or cancellation.** (1)

A license may not be denied or canceled by the regulatory authority without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the regulatory authority to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing conducted by the department must be held in accordance with the contested case procedures of the Montana Administrative Procedure Act.

**NEW SECTION. Section 14. Health officers to make investigations and inspections -- free access.** (1) State and local health officers or their designees shall conduct investigations and inspections of establishments.

(2) State and local health officers or their designees must be provided access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under subsection (1).

**(3) IF A LOCAL BOARD OF HEALTH INSPECTION AND REGULATORY PROGRAM IS BEING OPERATED IN LIEU OF A DEPARTMENT PROGRAM, THE LOCAL BOARD OF HEALTH AND NOT THE DEPARTMENT HAS THE DUTY AND AUTHORITY PROVIDED IN THIS SECTION.**

**NEW SECTION. Section 15. State special revenue account.** There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of [sections 1 through 15] and the rules adopted under [section 3].

**Section 16.** Section 45-5-623, MCA, is amended to read:

1           **"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person  
2 commits the offense of unlawful transactions with children if the person knowingly:

3           (a) sells or gives explosives to a child under the age of majority except as authorized under appropriate  
4 city ordinances;

5           (b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of  
6 majority;

7           (c) sells or gives an alcoholic beverage to a person under 21 years of age;

8           (d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child  
9 under the age of majority without authorization of the parent or guardian; or

10           (e) tattoos OR PROVIDES A BODY PIERCING ON a child under the age of majority without the explicit  
11 in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" ~~has~~ AND "BODY  
12 PIERCING" HAVE the meaning provided in ~~50-2-116~~ [section 2]. Failure to adequately verify the identity of a parent  
13 or guardian is not an excuse for violation of this subsection.

14           (2) A person convicted of the offense of unlawful transactions with children shall be fined an amount  
15 not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person  
16 convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed  
17 \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's  
18 comments for contingent termination of certain text.)"

19  
20           **Section 17.** Section 50-1-202, MCA, is amended to read:

21           **"50-1-202. General powers and duties.** The department:

22           (1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness  
23 records;

24           (2) shall make investigations, disseminate information, and make recommendations for control of  
25 diseases and improvement of public health to persons, groups, or the public;

26           (3) at the request of the governor, shall administer any federal health program for which responsibilities  
27 are delegated to states;

28           (4) shall inspect and work in conjunction with custodial institutions and Montana university system units  
29 periodically as necessary and at other times on request of the governor;

30           (5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions

1 to the governor and to the director of the department of corrections or the commissioner of higher education and  
2 include recommendations for improvement in conditions if necessary;

3 (6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating,  
4 plumbing, sewer systems, and ventilation of public buildings;

5 (7) shall develop and administer activities for the protection and improvement of dental health and  
6 supervise dentists employed by the state, local boards of health, or schools;

7 (8) shall develop, adopt, and administer rules setting standards for participation in and operation of  
8 programs to protect the health of mothers and children, which rules may include programs for nutrition, family  
9 planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health  
10 Service Act and Title V of the federal Social Security Act;

11 (9) shall conduct health education programs;

12 (10) shall provide consultation to school and local community health nurses in the performance of their  
13 duties;

14 (11) shall consult with the superintendent of public instruction on health measures for schools;

15 (12) shall develop, adopt, and administer rules setting standards for a program to provide services to  
16 children with disabilities, including standards for:

17 (a) diagnosis;

18 (b) medical, surgical, and corrective treatment;

19 (c) aftercare and related services; and

20 (d) eligibility;

21 (13) shall provide consultation to local boards of health;

22 (14) shall bring actions in court for the enforcement of the health laws and defend actions brought  
23 against the board or department;

24 (15) shall accept and expend federal funds available for public health services;

25 (16) must have the power to use personnel of local departments of health to assist in the administration  
26 of laws relating to public health;

27 (17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory.  
28 Fees should reflect the actual costs of the tests or services provided. The department may not establish fees  
29 exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special  
30 revenue fund for the use of the department in performing tests and services.

(18) shall adopt and enforce rules regarding the reporting and control of communicable diseases;

(19) shall adopt and enforce rules regarding the transportation of dead human bodies;

(20) shall adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems;

~~(21) shall adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease; and~~

~~(22)~~(21) shall enact or take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death."

**Section 18.** Section 50-2-116, MCA, is amended to read:

**"50-2-116. Powers and duties of local boards.** (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;



- (b) furnish treatment for persons who have communicable diseases;
- (c) prohibit the use of places that are infected with communicable diseases;
- (d) require and provide means for disinfecting places that are infected with communicable diseases;
- (e) accept and spend funds received from a federal agency, the state, a school district, or other persons;
- (f) contract with another local board for all or a part of local health services;
- (g) reimburse local health officers for necessary expenses incurred in official duties;
- (h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;
- (i) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.
- (j) adopt rules that do not conflict with rules adopted by the department:
- (i) for the control of communicable diseases;
- (ii) for the removal of filth that might cause disease or adversely affect public health;
- (iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;
- (iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and
- (v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and
- ~~(vi)(k) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors; subject to the provisions of 50-2-130 and [sections 1 through 15], adopt necessary regulations that are not less stringent than state standards for tattooing and body piercing establishments; and~~
- ~~(k)(l)~~ adopt regulations for the establishment of institutional controls that have been selected or approved by the:
- (i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;
- or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7."

**Section 19.** Section 50-2-130, MCA, is amended to read:

**"50-2-130. Local regulations no more stringent than state regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), (2)(j)(iii), ~~or (2)(j)(v), or (2)(k)~~ that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), (2)(j)(iii), ~~or (2)(j)(v), or (2)(k)~~ that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the

1 previously adopted local board rule."

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3 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 15] are intended to be  
4 codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 15].

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6 NEW SECTION. **Section 21. Effective date.** [This act] is effective January 1, 2006.

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